

Appendix I

Letter from Senator Jeff Wentworth
in Opposition to Report's Findings and Recommendations

SENATOR JEFF WENTWORTH

SENATE DISTRICT 25

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*The Senate of
The State of Texas*

October 23, 2000

COMMITTEES

Chairman, Nominations
Jurisprudence
State Affairs

**COUNTIES IN
SENATE DISTRICT 25**

Bandera	Llano (part)
Bexar (part)	Mason
Blanco	Medina (part)
Comal (part)	Schleicher
Gillespie	Sutton (part)
Guadalupe (part)	Tom Green (part)
Kendall	Travis (part)
Kerr	Williamson (part)
Kimble	

The Honorable Florence Shapiro, Chair
Senate Committee on State Affairs
Texas Senate
P. O. Box 12068
Austin, Texas 78711

Dear Senator Shapiro:

With regard to Interim Charge #6 of the Senate Committee on State Affairs, I respectfully disagree with the committee's recommendations that no statutory changes be made and hereby submit my letter of dissent on the matter.

The second sentence of the committee's recommendation states that "Testimony taken in committee did not provide sufficient evidence to remove any vehicle from the regulatory framework of Texas law." I respectfully and emphatically disagree. Attached is a copy of sworn testimony by Mr. John McBeth, General Manager of the Brazos Transit District and Legislative Chairman of the Texas Transit Association, given before the State Affairs Committee in Austin on October 28, 1999, that provides compelling grounds to make statutory changes.

Based on Mr. McBeth's testimony, requiring metropolitan transit authorities to purchase purpose-built busses only through licensed dealers adds unnecessary costs to the price of the vehicles without any real benefit to the purchaser.

I support making changes in the law that reflect the way business is being conducted and has been conducted with no harm whatever to the public for many



The Honorable Florence Shapiro
October 23, 2000
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years. We should not allow public transit agencies to be penalized for conducting their affairs in a fiscally responsible manner.

We should be respecting longstanding business practices that are beneficial to the public instead of adding unnecessary and wasteful expense to Texas taxpayers that has no benefit whatever to the taxpayers.

I request that this letter be attached to the interim report and filed accordingly.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Wentworth". The signature is stylized with a large, sweeping initial "J" and a horizontal line extending across the top of the name.

Jeff Wentworth

Enclosure

JW/jm

Testimony of

Mr. John McBeth
General Manager, Brazos Transit District

On behalf of the
Texas Transit Association

Before the
Texas Senate Committee on State Affairs
Austin

October 28, 1999

My name is John McBeth and I am the General Manager for Brazos Transit District, as well as Legislative Chairman of the Texas Transit Association whose members are the seven metropolitan transit systems, twenty-six small urban systems and the forty-one rural transit systems providing public transportation service in the State. I want to add that all public transportation in Texas is performed by transit authorities, transit districts or municipal transit departments. They are all public agencies of the State and recognized as such in State law.

As public agencies, our interest is then fiduciary on behalf of the taxpayers of the State and the counties and cities who have entrusted us to act as trustees for the funds we receive and to shepherd it in a way to maximize the public benefit and welfare in the most fiscally responsible method practical.

The issue I am here to address today is the change in the enforcement by the Texas Motor Vehicle Commission of large, purpose-built vehicles.

As you can imagine, because these vehicles are purchased largely with federal funds, the federal government has many ways to look over our shoulder to ensure the public trust and the wise use of these monies.

Though the issue at hand usually involves purchases of large, purpose-built buses by metropolitan transit agencies, and urban transit districts. Brazos Transit, which I represent, operating in twenty-two rural counties as well as the small urban area of Bryan and College Station, also purchases these custom buses for our over-the-road and fixed route operations. I can speak to the issue from personal experience.

The issue at hand for public transportation is the recent enforcement of a Motor Vehicle Commission statute that is contrary to longstanding business practice. The public transit community has been very happy with the practice of purchasing smaller vehicles through the state's auto-dealer network, while dealing directly with manufacturers on the purchase of large, purpose-built buses without the need for intermediaries.

Generally, purpose-built buses are larger buses custom-designed and manufactured from the ground up for the public transit market. It is like a sheet of metal moving through a factory only after an order has been placed, and a purpose-built bus coming out the other end. Dealer-delivered buses are smaller vehicles that are mass-produced with standardized assemblies, such as standard autos, vans, small

buses. After that, they may or may not have been further modified for public transit use. Going through dealers for smaller vehicles, or going directly to manufacturers for purpose-built designs, has never been a problem for either manufacturers or Texas transit agencies.

I have never heard of any complaint being filed with the Motor Vehicle Commission by a public transit agency – the consumer – against a manufacturer regarding large, purpose-built buses.

The enforcement actions we have recently seen surprised both the public transit community and the bus manufacturers when such actions began late last year.

Simply put, the Texas Transit Association wants to see the law mirror industry practice as it has existed... and without any additional incremental benefit to either manufacturer or dealer, or public transit agency for that matter.

We understand and support the idea of auto and truck manufacturers being required to be purchased through licensed dealers in the State. There is a practical need to protect consumers – individual consumers buying cars and trucks, or even the smaller transit systems buying the smaller vehicles – who can have defective-product or warranty problems. In such instances, both the dealers and the manufacturers can be held liable for the problem product and act as intermediaries between the individual consumer and corporate giants in Detroit. It's a good protection for the little guys purchasing a lemon from the big guys. There is a practical benefit to the public and individual consumers.

The question is: Is there a benefit by having a dealer standing between a public transportation system and a manufacturer to procure ten, or fifty ... or even 200 or more large, purpose-built vehicles in a single purchase? A 200-bus purchase can total over \$50 million.

On behalf of the purchasers of these large, purpose-built buses, the Texas Transit Association says, "No, there is no benefit." There wasn't public benefit prior to this year, and there is no benefit now.

In this instance, the purpose and intent of the law – consumer protection – doesn't apply. If there were consumer protection concerns, I – as a consumer acting as a trustee for public funds – would be here supporting the law as it stands today rather than how business has been conducted.

Moreover, adding an intermediary for these very specific custom-designed, purpose-built vehicles only adds to the cost of doing business for both manufacturers and public transportation agencies. When a party other than a buyer or a seller says that the manufacturer will absorb the difference; that there's no additional cost to the public transit agency, then you have to question as to why that is being said.

Public transportation already has built-in financial safeguards for the vehicles we purchase. Believe me when I say that the federal government makes certain that the \$5.8 billion appropriated for transit in Fiscal Year 2000 is not haphazardly managed.

When I began the process of procuring the \$20 million in vehicles as I did a few years ago, I had to adhere to rigorous procurement and bid standards to get the best price for the best product appropriate to the communities I serve. Before I can purchase a vehicle from a manufacturer of these large,

purpose-built buses, the manufacturer must first produce a prototype to be rigorously tested at a federal testing site in Pennsylvania.

After the feds give their approval of a tested prototype, I, as a purchaser and having custom designed a purpose-built vehicle to meet *my local needs ... I am required* by the federal government to provide on-site monitoring and inspection of the vehicle while it is in the process of manufacture. How can the dealer help me as a consumer here? He's the manufacturer's representative. These kinds of vehicles – at the large sums of money involved – means that I cannot rely on anyone else to take care of *this* consumer.

By the way, these vehicles are hardly foreign: public transit purchases must comply with the US Department of Transportation's "Buy America" Program standards requiring at least 40% of the vehicle to be "American made." For real foreigners, this usually means fabricating the bus shell, shipping that shell to the U. S., and later installing American components and operating parts, such as engines, transmissions, seating, etc.

When the vehicles are delivered, a public transit agency has a federally-prescribed period in which to decline acceptance of the delivered vehicles due to defects or not otherwise in conformance with the bid specifications. If there are problems with these special vehicles, I am protected twice over: most every standard bid for these vehicles require warranty not just from the manufacturer, but also the manufacturer of the component parts.

There are other safeguards for transit agencies. The federal government *requires* both a "bidder's bond" and a "performance bond" at 100% of the total sales order to protect both public transit agencies and the federal dollars involved, especially when a transit agency is making "progress payments" during the vehicles production period. Without such a performance bond in place, the federal government will look to the transit agency to reimburse the government for that portion of federal dollars lost for whatever reason, such as going bankrupt.

To sum it up: there are plenty of safeguards in place for the public and the public's money.

It is my personal experience, and the experience of most every transit agency I know, that when it comes down to a problem with one of these unique vehicles, the dealer is simply there to handle the paper, and the public transit agency must negotiate directly with the manufacturer to obtain any satisfaction or redress.

So, again, "Where is the benefit of having an intermediary involved," except to insert themselves in the process and carve out additional sales commissions without any benefit for their State-required participation in this particular business deal. This is not consumer protection. While I – as a general manager of a transit system – am the consumer, ultimately the State of Texas and its citizens are the ultimate consumer.

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Testimony of John McBeth

The introduction of new commission fees in such sales are not borne by the manufacturer, but are passed onto the public – and I stress –*public* transit agencies. If all manufacturers must pay commissions – each paying a similar amount for licensing as well as all other costs associated with this process – then those costs are going to be passed along to my transit agency to absorb. For my public transportation system in central and east Texas, this is federal, local ... *and especially state appropriations dollars* which are not easy to come by.

As I said earlier, the Texas Transit Association believes in the instance of large, purpose-built vehicles, the law should mirror the business practice that has existed for many years.

Thank you for your time.

Appendix II

Senate Bill 1146
76th Legislature

FILE 76th-'99

By Westcott

S.B. No. 1146

A BILL TO BE ENTITLED

AN ACT

1
2 relating to exemption from regulation of certain bus manufacturers.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

4 SECTION 1. Section 503.024(a), Transportation Code, is
5 amended to read as follows:

6 (a) A person is not required to obtain a dealer general
7 distinguishing number if the person:

8 (1) sells or offers to sell during a calendar year
9 fewer than five vehicles of the same type that are owned and
10 registered in that person's name; ~~or~~

11 (2) is a federal, state, or local governmental agency;
12 or

13 (3) sells buses manufactured by the person outside
14 this state only to municipalities, transit authorities, and other
15 governmental entities in this state.

16 SECTION 2. Section 4.01, Texas Motor Vehicle Commission Code
17 (Article 4413(36), Vernon's Texas Civil Statutes), is amended by
18 adding Subsection (e) to read as follows:

19 (e) This Act does not apply to a person who sells buses
20 manufactured by the person outside this state only to
21 municipalities, transit authorities, and other governmental
22 entities in this state.

Appendix III
Amendment to House Bill 3092
76th Legislature

COMMITTEE AMENDMENT NO. _____

1 Amend H.B. No. 3092 by adding the following appropriately
2 numbered section of the bill and renumbering sections
3 appropriately:

4 SECTION _____. (a) Sections 503.024(a) and (e),
5 Transportation Code, are amended to read as follows:

6 (a) A person is not required to obtain a dealer general
7 distinguishing number if the person:

8 (1) sells or offers to sell during a calendar year
9 fewer than five vehicles of the same type that are owned and
10 registered in that person's name; [or]

11 (2) is a federal, state, or local governmental agency;
12 or

13 (3) sells in this state only purpose-built public
14 transportation buses designed and manufactured by the person to
15 transit authorities, transit districts, or municipal transit
16 departments created or operating under Subtitle K, Title 6,
17 Transportation Code.

18 (e) In this section:

19 (1) "Purpose-built public transportation bus" means a
20 bus, coach, or trolley bus originally designed and manufactured for
21 public mass transit.

22 (2) "Special [---"special" interest vehicle" has the
23 meaning assigned by Section 683.077(b).

24 (b) Section 4.01, Texas Motor Vehicle Commission Code
25 (Article 4413(36), Vernon's Texas Civil Statutes), is amended by
26 adding Subsection (e) to read as follows:

27 (e) This Act does not apply to a person who sells in this
28 state only purpose-built public transportation buses designed and
29 manufactured by the person to transit authorities, transit

1 districts, or municipal transit departments created or operating
2 under Subtitle K, Title 6, Transportation Code. In this
3 subsection, "purpose-built public transportation bus" means a bus,
4 coach, or trolley bus originally designed and manufactured for
5 public mass transit.

6 (c) The changes in law made by this section apply to a sale
7 occurring on or after the effective date of this Act or a sale
8 occurring before the effective date of this Act that is the subject
9 of an administrative proceeding that as of the effective date of
10 this Act is not final.